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SUBJECT: HELMAND: DEVELOPMENTS IN THE INFORMAL JUSTICE SECTOR

Summary

1. (SBU) Summary: The absence of any formal Afghan government (GIROA) justice infrastructure in many districts of Helmand province has created a legal vacuum that enables "insurgent justice" to hold sway. In order to help the Afghan government (GIROA) compete with the Taliban's shadow justice system, the UK-led Provisional Reconstruction Team (PRT) in Helmand has initiated a program to develop informal, local justice systems that draw on local Afghan traditions. As part of this effort, the UK-led PRT based in Lashkar Gah has facilitated the establishment of Community Councils (CC), Prisoner Review Shuras (PRS), and Justice Sub-Committees (JSC) to take up minor criminal and civil cases at the district level. This cable outlines activities relating to the informal justice system that are being spear-headed by the UK as part of its PRT activities in Helmand.

2. (SBU) Formal sector capacity building efforts have not been as robust, but the PRT is working with the Provincial Prosecutor to get GIROA prosecutors to some key districts on a rotating basis. An increase in formal GIROA prosecutors and judges should help lessen the need to rely upon the informal mechanisms, which in some cases are not consistent with GIROA legal requirements. To combat police corruption, the PRT is mentoring an outreach campaign to deter abuses and highlight prosecutions of corrupt police. The PRT has ambitious plans to facilitate more intelligence-led policing to improve investigations and minimize forced confessions. To "criminalize the insurgency," the PRT also is working with National Directorate of Security (NDS) officials to enhance their ability to coordinate efforts with the military in kinetic environments. End Summary.

Informal Judicial Mechanisms Introduced in Districts

3. (SBU) As part of the Afghan Social Outreach Program (ASOP), the UK-led PRT in Helmand Province, in coordination with the Provincial Governor's office, has established Community Councils, Prison Review Shuras and Justice Sub-Committees (JSCs are subsets of the CCs) in several districts to perform some judicial functions where there is not a court and prosecutor. (Note: Garmsir and Nad-Ali districts have both PRSs and JSCs in place; there is a JSC in Gereshk district and a PRS in Sangin district.) The components of these mechanisms are all local - CC members are selected by a locally-chosen electorate of community elders, and the PRSs are chaired by the District Governor (DG) and composed of the local heads of the Afghan National Police (ANP), Afghan National Army (ANA), National Security Directorate (NDS), and one member of the CC. It should be noted, however, that these traditional, informal justice mechanisms are not designed to deal with major crimes. The draft GIROA policy concerning traditional justice considers only petty crime where no prison time is contemplated to be appropriate for referral to the local, traditional bodies. The decisions of these bodies will then be deemed valid if not in contravention of Afghan law and

international human rights standards.

¶4. (SBU) In districts where there is no prosecutor, the following procedures are in place: Persons arrested and detained by the security forces in a given district are brought before the PRS within 72 hours of arrest, where a determination by a majority of the members is made on whether there is evidence of a crime. If there is no evidence of a crime, the detainee must be released. If evidence exists, the PRS determines whether the case constitutes a serious or minor offense, and in serious cases, it is then transferred to the formal court system in the provincial capital, Lashkar Gah. If the offense is minor, the case is transferred to the JSC for resolution.

¶5. (SBU) According to an agreed framework, international mentors (typically DST officers) must be informed about, and permitted to attend PRSs, but no similar provision exists for international oversight of the determinations of the JSC. JSCs have no authority to order imprisonment and its decisions are to be based on restorative justice and conflict prevention principles. Decisions do not require authorization from an outside authority prior to implementation. The PRT was recently given access to books containing recorded prior decisions. Although there is a right to take matters to the formal sector, the manner or extent to which this occurs once a case has entered the informal sector is not fully known. The system was set up to construct an alternative to insurgent justice systems in districts where there is not a fully functioning formal system. It is difficult, however, if not impossible, to be aware of or monitor all of its functions or the disposition of detainees arrested by security forces.

Deploying Prosecutors to Districts

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¶6. (SBU) The PRT recently began working with the Chief Provincial Prosecutor (CPP) to facilitate the deployment of prosecutors to more districts, on a 30-day rotating basis. This approach was designed to minimize the time spent by prosecutors away from their homes and mitigate potential corruption from working in one area too long. In Gereshk district, a prosecutor replaced an ineffective predecessor in October, along with an investigative police officer from Lashkar Gah. These moves, coupled with greater support from police mentors, have resulted in the prosecutor functioning effectively. Additionally, in Sangin district, the recent arrival of a prosecutor ended a long vacancy. Although the District Governor has intervened to influence some cases, the prosecutor has been reasonably effective. (Note: The District Governor had previously served as the chairman of the PRS, and is clearly unwilling to relinquish that influence. End Note) Sustained attention by police advisors, frequent communication with the CPP, and coordination with other PRT thematic strands to identify political remedies to the problems of third party influence should help to ensure the continued effectiveness of these prosecutors.

Developing an Anti-corruption Campaign

¶7. (SBU) Police corruption is perhaps the greatest impediment to the implementation of rule of law in Helmand. The PRT, in conjunction with the Marine Expeditionary Brigade (MEB), has developed an anti-corruption campaign with input from the Major Crimes Task Force in Kabul. If approved by GIRoA, the campaign will focus on messaging to the general public about the illegality of police corruption and its damaging effects. The program will be Afghan led and internationally mentored, and will target areas known for a prevalence of corruption. Prior to implementation, the plan must be approved by the Anti-Corruption Task Force, as well as the Afghanistan Ministry of the Interior General who leads the Major Crimes Task Force. The anti-corruption campaign will also be coordinated with the Attorney General's Office (AGO). Any successful corruption prosecutions will be highlighted in hopes of deterring such activity.

Developing Intelligence-led Policing

18. (SBU) Intelligence-led policing is critical for effective investigations. Increasing the ANSF's ability to collect objective probative evidence will also be a critical step towards eliminating coerced confessions. The UK-led PRT's Rule of Law cell has ambitious plans in this regard, and recently has identified criminal investigators who are able to deploy to districts on short notice to address complex or politically sensitive cases, and respond to surges in criminal activity. These special task forces will be trained in interview techniques, evidence collection, and case preparation, with similar training regiments planned for prosecutors. The PRT is also focusing on building NDS capacity to function effectively in a manner consistent with the rule of law. In this vein, the UK PRT's Security Sector Reform cell is training a small group of NDS personnel to be more effective as a task force to deploy to more kinetic areas to coordinate with the military to "criminalize the insurgency." The UK is also funding construction of an NDS detention facility.

Comment

19. (SBU) Over the medium term, informal justice mechanisms in Helmand will continue to play a vital role in resolving minor criminal disputes. If, by virtue of District Governor and CC participation, PRSSs and JSCs are seen by Afghans as GIROA processes (as we believe they are), these informal mechanisms can be viable alternatives to insurgent justice, and will allow GIROA to compete directly with the Taliban in the justice sector. We must be careful, however, not to support the development of the informal justice sector in ways that contravene Afghan law or undermine the formal sector; to this end, we should continue our efforts to facilitate the placement of prosecutors at the district level and build up formal mechanisms with an aim to transitioning from informal to formal processes when possible. While corruption, insecurity, and underdeveloped law enforcement remain impediments to the advancement of the rule of law, targeted use of informal mechanisms can begin to erode the Taliban grip on justice delivery in Helmand's districts. With proper mentoring and facilitation, facilitation of GIROA prosecutors at the district level in Helmand shows considerable promise in providing an alternative to Taliban justice.

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